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May 6, 1993

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
Washington, DC 20554

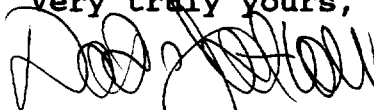
Re: PR Docket 93-35

Dear Ms. Searcy:

Transmitted herewith, on behalf of the Paging Division of McCaw Cellular Communications, Inc., are an original and four copies of its comments with respect to the amendment of the Commission's Rules to provide channel exclusivity to qualified private carrier paging systems at 929-930 MHz, PR Docket 93-35.

Should there be any questions with regard to this matter, kindly communicate directly with the undersigned.

Very truly yours,



David C. Jatlow  
Counsel for the Paging Division of  
McCaw Cellular Communications, Inc.

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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**MAY - 6 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment Of The Commission's  
Rules To Provide Channel  
Exclusivity To Qualified Private  
Carrier Paging Systems At  
929-930 MHz

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PR Docket No. 93-35

**To: The Commission**

Comments Of The Paging Division of  
McCaw Cellular Commuunications, Inc.

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May 6, 1993

## Table of Contents

Summary.....	i
Introduction.....	1
Discussion.....	3
The FCC's Proposal Eliminates The Differences Between 900 MHz PCP and Common Carrier Service Providers.....	3
The FCC's Proposal Creates Unfair Regulatory Differences Between 900 MHz PCP and Common Carrier Service Providers.....	6
Speed of System Deployment.....	7
State Regulation.....	8
Slow Groth Implementation Schedules.....	10
Grandfathering Should Not Be Allowed.....	12
The Commission Must Clarify What Constitutes An Exclusive Use System.....	13
Conclusion.....	15

### **Summary**

The Paging Division of McCaw Cellular Communications, Inc. supports regulatory actions which promote spectrum efficiency and provide incentives for operators to provide new and innovative telecommunications services in a competitive market. It also believes that similar services should be regulated similarly.

If the Commission's proposal in this proceeding (as well as its proposed action in PR Docket No. 93-38) is acted upon favorably there will be essentially no difference between the service that Part 90 PCP licensees and Part 22 common carrier licensees may provide. Despite the equality of service offerings the FCC's regulatory scheme for Part 22 and Part 90 carriers remains inequitable. For example, Part 22 common carriers are subject to state regulation while Part 90 PCP licensees are not:

essentially similar service providers in a manner which allows full and fair competition.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of the Commission's	)	PR Docket No. 93-35
Rules to Provide Channel Exclusivity	)	
To Qualified Private Carrier Paging	)	
Systems at 929-930 MHz	)	
	)	

To: The Commission

**Comments of The Paging Division of  
McCaw Cellular Communications, Inc.**

The Paging Division of McCaw Cellular Communications, Inc. ("McCaw"), by its attorney, hereby submits its comments with respect to the above-captioned proceeding.<sup>1</sup> In support thereof, McCaw states as follows:

**I. Introduction**

Through various subsidiaries the Paging Division of McCaw Cellular Communications, Inc. is licensed to operate both common carrier paging facilities in the 930-931 MHz band and Private Carrier Paging facilities in the 929-930 MHz band. As one of the leaders in the provision of wireless communications services, including one-way messaging services, McCaw Cellular Communications, Inc. has a long standing tradition of supporting the efficient use of radio spectrum. In principle McCaw supports the concept of affording PCP paging licensees exclusivity. It

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<sup>1</sup> Notice of Proposed Rule Making, PR Docket No. 93-35, \_\_ FCC Rcd \_\_\_, released March 31, 1993 (hereinafter "NPRM").

agrees with the Commission's conclusions that exclusivity for PCP licensees in the 929 MHz band will eliminate inefficiencies resulting from regulations which require PCP carriers to share channels and will provide PCP carriers with incentives to invest in wide area, high-capacity 900 MHz paging systems.<sup>2</sup> McCaw also agrees that the Commission should eliminate anachronistic regulations which tend to thwart incentives to invest in high technology systems which can create additional competition in the paging marketplace.

The FCC's proposal in this proceeding, taken together with the Notice of Proposed Rule Making in PR Docket No. 93-38<sup>3</sup> in which the FCC proposes to allow PCP paging licensees to provide service to individuals, will serve to effectively eliminate the last significant differences between the 900 MHz band service offerings of PCP carriers and common carriers from an end user standpoint. That is, if the proposals in this proceeding and in PR Docket 93-38 are implemented, the carrier providing 900 MHz paging service will be transparent to the end user for all intents and purposes. Yet, because the Commission's proposals

lend its full support to any proposal in which similarly situated service providers are not treated similarly. Therefore, it believes the Commission must level the regulatory playing field between Part 22 common carriers and Part 90 PCP carriers in the provision of essentially fungible wireless mobile messaging services such as exist in the 900 MHz paging bands.

As will be set forth in more detail below, McCaw requests the Commission to refrain from authorizing the proposals in the NPRM until such time as it levels the regulatory playing field by treating all 900 MHz paging licensees equally.

## **II. Discussion**

### **A. The FCC's Proposal Eliminates The Differences In Service Offerings Between 900 MHz PCP Carriers And Common Carriers**

McCaw fully supports adoption of reasonable rules which tend to promote the efficient use of radio spectrum. McCaw also supports reasoned regulations designed to ensure a fully competitive marketplace. A review of the NPRM, however, suggests that this proceeding (as well as the NPRM in PR Docket No. 93-38) is designed to eliminate the distinctions between 900 MHz PCP carriers and common carriers.

As an example, in justifying its proposal to provide PCP licensees with exclusivity in the 900 MHz band, the Commission notes that the trend in 900 MHz paging is toward wide area, regional and nationwide paging systems.<sup>4</sup> Since wide area regional

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<sup>4</sup> NPRM at para 5.



and de jure nationwide systems exist for the most part in the 931 MHz common carrier band, one must conclude that the Commission believes the public interest would be served by authorizing PCP carriers in the 929 MHz band to provide identical services. In addition, in the Notice of Propose Rule Making in PR Docket No. 93-38, supra., the FCC proposes to allow PCP carriers in the 929 MHz band to provide service to individuals. The tentative elimination of this eligibility barrier is based on the Commission's view that PCP carriers and Part 22 common carriers should be competitive in fact:

...we have tentatively concluded that we should revisit our prior decision not to allow individuals to use PCP services. First, the rapid growth in demand for paging services suggests that individual users would benefit from being able to choose between private and common carrier paging alternatives. Second, allowing individual access to PCP services would remove an unnecessary barrier to the ability of PCP systems top [sic] compete fully in the paging marketplace. Finally, we see no countervailing benefit to the public from retaining the current rule.<sup>5</sup>

Similarly, from a purely technical standpoint the FCC's NPRM seeks to make 900 MHz PCP and common carrier paging offerings identical.

The height/power provisions of Section 22.505(b) of the Commission's rules requires common carrier licensees in the 931 MHz band to operate with no more than 1000 watts ERP with an

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<sup>5</sup> Notice of Proposed Rule Making, PR docket No. 93-38, supra., at para. 7.

antenna height 1000' above average terrain ("AAT"). Above 1000' AAT power reductions are required. The Part 90 height/power limitations for PCP licensees in the 929 MHz band are identical to that for Part 22 common carriers.

Section 22.502(c) of the Commission's rules classifies 931 MHz common carrier stations according to the average antenna height above average terrain and the ERP of the facility. Section 22.503(d) of the Commission's rules sets forth the minimum required geographic separation between various classes of co-channel 931 MHz common carrier paging facilities. Unless, the mileage separations of Section 22.503(d) are met, no co-channel assignment will be issued to a non-affiliated carrier. If the Commission's proposal in the NPRM is adopted, Section 90.495 of the Commission's rules will prescribe identical height/power limits and co-channel separation limits for Part 90 PCP carriers as exist for Part 22 common carriers under Sections 22.502 and 22.503 of the Commission's rules. In fact, McCaw speculates that in an attempt to make the 900 MHz PCP services identical from a technical standpoint to 900 MHz common carrier services, the base station classifications and co-channel separation rules in proposed Section 90.495 were taken directly from Part 22.<sup>6</sup>

The conclusion that must be drawn from the foregoing is that

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<sup>6</sup> It should be noted that proposed Section 90.495(b)(1) provides classifications for 929 MHz base station transmitters using power levels up to 3500 watts. Proposed Section 90.494(f) would appear to be inconsistent with the use of 3500 watts since it limits 929 MHz facilities to a maximum power of 1000 watts ERP.



carriers.<sup>7</sup>

### **Speed of System Deployment**

Part 90 PCP carriers have a significant advantage over Part 22 common carriers because they are able to deploy systems and provide service to the public considerably more quickly than common carriers. This is due to the fact that upon filing a "coordinated" application for a 929 MHz PCP paging facility and assuming a number of additional requirements are met, Section 90.159 of the Commission's rules allows the PCP carrier to commence operations under a Temporary Permit. There is no comparable rule in Part 22 for common carriers. Because it presently takes approximately 6-9 months for the Common Carrier Bureau's Mobile Services Division to process a 931 MHz base station application, PCP carriers can commence operations approximately 5 to 8 months earlier than their common carrier counterparts.<sup>8</sup>

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<sup>7</sup> The factors do not include such items as 401 form applications which are considerably more detailed than 574 Form applications and thus take longer to prepare and consume greater resources. Nor does this include the burden Part 22 applicants have in being required to microfiche virtually all applications submitted to the FCC. While these are acknowledged to be relatively minor inequities in the larger scale of a proceeding such as the instant NPRM, cumulatively they are significant burdens for Part 22 common carriers which are not shared by Part 90 PCP carriers.

<sup>8</sup> The time period referred to above assumes that it takes a frequency coordinator approximately 6 weeks from the time it receives a 574 Form application to conduct the required frequency coordination and tender the 574 Form application to the Commission.

### **State Regulation**

Perhaps the most significant difference in the disparate regulatory treatment of common carriers and private carriers relates to state regulatory jurisdiction. Stated simply, common carriers are subject to the burdens and vagaries of state regulation and PCP carriers are not. This provides PCP carriers with access to certain markets denied to common carriers and does not hamper the ability of PCP carriers to respond quickly to the needs of their subscribers.

For example, McCaw operates extensive common carrier paging facilities throughout the State of California. It is currently in the process of implementing a state-wide 931 MHz paging system. Aside from the time it will take the FCC to process more than 90 base station applications, McCaw must also obtain authorization for the system from the California State Public Utilities Commission. The application for state certification must include information demonstrating or showing, among other items (1) technical feasibility and competence; (2) proposed rates and charges, including a tariff therefor; (3) economic feasibility; (4) financial responsibility; and (5) environmental impact considerations. Action on the state certification application may take several months.<sup>9</sup>

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<sup>9</sup> McCaw will attempt to reduce the time to actually implement the state-wide system once it receives all necessary regulatory approvals by taking advantage of the pre-authorization construction provisions of Section 22.43 of the Commission's rules. However, even though McCaw has received pre-authorization construction authority for some of its California 900 MHz base

The delay inherent in having to satisfy both the FCC's Common Carrier Bureau as well as the California PUC must be contrasted with the fact that a PCP carrier (1) is specifically exempt from state regulation and (2) can commence operations as soon as it files a coordinated application with the FCC.<sup>10</sup>

In addition, there are states which regulate common carrier paging operations which simply will not authorize additional paging competition. For example, at one point McCaw filed a number of base station applications for a 900 MHz paging system to serve the State of Tennessee. Contemporaneous with the filing of its FCC base station applications McCaw submitted its application for certification to the Tennessee PSC. Though the FCC ultimately granted all base station applications for this system the State of Tennessee did not act on McCaw's state application. McCaw filed for and received two extensions of time from the FCC to construct its state-wide system based on the fact that Tennessee had not yet acted on its state certification application. Finally, because the FCC would no longer extend the construction deadline and the State of Tennessee would not authorize another paging carrier, McCaw was forced to abandon its

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stations and it ultimately assumes it will receive such authority for the entire system, it can not even commence construction until it receives approval to do so from the California PUC.

<sup>10</sup> See page 7, infra.

plans to provide 900 MHz state-wide service in Tennessee.<sup>11</sup>

#### **Slow Growth Implementation Schedules**

Under existing rules 929 MHz PCP carriers have 8 months after authorization within which to place a transmitter into operation. Section 90.496 will provide the PCP carrier up to three years to construct a 929 MHz paging system which qualifies for exclusive use if the system proposed has more than 30 transmitters.<sup>12</sup> While extended implementation schedules are not unreasonable per se<sup>13</sup>, especially for large regional or nationwide systems, the rule proposed in this proceeding is yet another example of the disparate regulatory treatment that exists between PCP carriers and common carriers. This is due to the fact that 931 MHz common carrier licensees have only 12 months after authorization to place a transmitter into operation despite the fact that the transmitter might be part of a large state-wide, regional or de facto nationwide system.

The specific impact and inequity in this situation manifests itself in the planning process. A common carrier interested in constructing a "regional" 900 MHz paging system consisting of more than 70 transmitters on the same frequency for example would

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<sup>11</sup> To the best of McCaw's knowledge, the State of Tennessee has not authorized additional paging competition since its applications were filed.

<sup>12</sup> In addition, the proponent must provide justification for its request as well as a proposed implementation schedule.

<sup>13</sup> McCaw believes slow growth implementation schedules should be made available to Part 22 licensees.

be required to construct all 70 transmitters within 12 months of the authorization in order to "protect" the frequency. From a planning standpoint this entails tying up significant capital to pay for the equipment involved in the project as well as expending significant personnel resources to supervise and physically construct the large regional system in a relatively short period of time. Under the proposal before the Commission a PCP carrier on the other hand would be able to protect its 929 MHz frequency by having up to three years to construct its system, thereby conserving capital and other resources.

Perhaps most importantly, the ability to "protect" a 900 MHz paging frequency by extending the implementation schedule of the system over three years serves to guaranty, to the extent possible, that the PCP carrier will be able to offer a common channel wide area system to subscribers and prospective subscribers. Because the rules applicable to common carriers do not provide this same flexibility, the ability to guaranty a common channel wide area system in a competitive paging marketplace is an extremely effective marketing tool--one that works to the disadvantage of the common carrier service provider.

The regulatory inequities between common carriers and PCPs such as those referred to above have always been problematical in the marketplace. However, under the existing regulatory scheme (i.e., one in which PCP carriers in the 900 MHz band do not have exclusive use of paging channels and where there are still significant restrictions on end user eligibility) there are



distinctions in the quality of service that a common carrier or a PCP can provide which arguably create the semblance of a reasonably level playing field.

Under the proposed revisions to the Part 90 rules, however, the distinction in the quality of service that can be provided will also be eliminated. The revisions proposed in this NPRM will allow PCP paging licensees to provide local, regional and nationwide 900 MHz service. The proposed rules will provide PCP carriers exclusive use of 900 MHz channels thereby enabling them to make more efficient use of the spectrum and allowing them to provide higher speed services. Yet, PCP carriers will continue to retain the regulatory benefits derived from more advantageous application processing procedures which leads to quicker implementation of 900 MHz paging systems and not being saddled by state regulatory burdens.

#### **C. Grandfathering Should Not Be Allowed**

McCaw believes there is a fundamental inequity in grandfathering existing non-exclusive 900 MHz PCP carriers into de jure nationwide, regional or local exclusive use systems, in part, because it exacerbates the discriminatory distinctions between private carriers and common carriers in the 900 MHz paging bands as set forth in more detail above. However, to the extent that the Commission ultimately adopts the proposals in the NPRM, McCaw specifically requests the Commission to refuse to grant exclusive use status to any applicant for a 900 MHz PCP system filed subsequent to February 18, 1993, the date on which

the NPRM in PR Docket No. 93-35 was adopted.

The fact that the Commission lifted the stay on the filing and processing of all 900 MHz PCP applications approximately one month after the NPRM was adopted<sup>14</sup> suggests that if the Commission acts positively on the proposals in the NPRM grandfathering will occur. This action is likely to produce the wholesale filing of applications for 900 MHz PCP facilities by speculators whose sole motivation will be to bootstrap themselves into receiving a grant for an exclusive use system. Such a course of action will not result in legitimate local, regional or nationwide exclusive use systems but rather will result in additional processing burdens for the Commission. If Commission action in this proceeding is delayed for any length of time the Commission may also be unintentionally encouraging a situation in which authorizations are awarded to speculators who do not construct and whose authorizations cancel automatically. When this occurs it serves only to delay the filing of applications by legitimate PCP carriers for exclusive use local, regional and nationwide PCP systems.

### **III. The Commission Must Clarify What Constitutes An Exclusive Use System**

McCaw notes that there is an apparent ambiguity in the NPRM which needs clarification. Specifically, the very basis of this

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<sup>14</sup> We note that the Order in PR docket No. 93-35, FCC 93-171, was adopted by the Commission two days prior to the release date of the NPRM in which the Commission announced the freeze on the filing of all 900 MHz PCP applications.

proceeding is designed to afford 900 MHz PCP carriers exclusive use of frequencies for local, regional and/or nationwide systems. The NPRM is quite explicit regarding the requirements that must be met to obtain an exclusive use PCP channel including, for regional and nationwide systems, certain geographic distribution requirements. What is not as clear is the geographic extent to which exclusivity applies to local and regional systems. The ambiguity is created since language in the NPRM and the proposed rules discuss market concepts giving rise to the possibility that both channel exclusivity and market exclusivity for that channel are contemplated.

For instance, a regional system must consist of 70 or more transmitters located in not more than 12 adjacent states. A

carriers vis a vis 900 MHz PCP carriers. McCaw submits that if the Commission contemplates providing PCP carriers with frequency exclusivity as well as market exclusivity, it should be openly proposed and interested parties should have an opportunity to comment thereon.

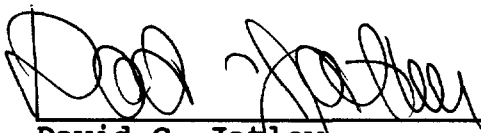
#### **IV. Conclusion**

As set forth above, McCaw supports regulatory actions which promote spectrum efficiency and provide incentives for operators to provide new and innovative telecommunications services in a competitive market. But McCaw also believes strongly that similar services should be regulated similarly.

regulatory framework which regulates essentially similar service providers in a manner which allows full and fair competition.

Respectfully submitted

The Paging Division of McCaw  
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\_\_\_\_\_  
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